



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Date: April 26, 2013
Time: 9:00 a.m.
Judge: Hon. Susan Illston
Courtroom: 10, 19th Floor

19 COMES NOW JOSEPH M. ALIOTO ("JMA"). who seeks leave of court to file his
20 MEMORANDUM OF POINTS AND AUTHORITIES IN SUR REPLY TO REPLY IN
21 FURTHER SUPPORT OF LFG NATIONAL CAPITAL, LLC'S MOTION TO DIRECT FEES
22 AND COSTS. a proposed copy which is attached hereto marked *Exhibit "A"* and incorporated by
23 reference herein. on the basis that the Reply in Further Support of LFG National Capital, LLC's
24 Motion to Direct Fees and Costs raises new issues of law and fact which are outside the original
25 moving papers.

26 | DATED: April 15, 2013

COOK COLLECTION ATTORNEYS
By: /s/ David J. Cook
DAVID J. COOK, ESQ. (SBN 060859)
Attorneys for Non-Party
JOSEPH M. ALIOTO

APPLICATION FOR LEAVE TO FILE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPLY TO REPLY IN FURTHER SUPPORT OF LFG NATIONAL CAPITAL, LLC'S MOTION TO DIRECT FEES AND COSTS - Master File No. 07-1827 SI / MDL NO. 1827

EXHIBIT “A”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

I. INTRODUCTION.

20 This Sur Reply is limited to the new issues raised by the REPLY IN FURTHER SUPPORT
21 OF LFG NATIONAL CAPITAL, LLC'S MOTION TO DIRECT FEES AND COSTS. By this sur
22 reply, JOSEPH M. ALIOTO ("JMA") does not concede any of the claims, alleged facts, or points
23 of law raised by LFG National Capital, LLC ("LFG"), but only raises discrete issues based upon
24 new and unraised claims.

To avoid any doubt, JMA disputes claims that the amounts due LFG has been conceded, or for that entire, the entire \$28M is owing, or that the debt was solely for business purposes.

II. JOSEPH M. ALIOTO PROPERLY RESPONDED.

28 JMA is the sole signatory to the TERM LOAN AND SECURITY AGREEMENT A-1

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUR REPLY TO REPLY IN FURTHER SUPPORT
OF LFG NATIONAL CAPITAL, LLC'S MOTION TO DIRECT FEES AND COSTS**

1 THROUGH A-19, plus Exhibits and Addendums, Document 7671-2 ("TLSA"). JMA signed the
 2 TLSA at page A-19. JMA is the Alioto Law Firm, which is a sole proprietorship, and not a
 3 separate entity. This is further supported by the fact that the Financing Statements at page E-1,
 4 Document 7671-8, lists JMA as a sole proprietorship.

5 Alioto Law Firm is not a partnership, corporation, LLP, or any other entity, but rather, the
 6 trade name for JMA. Accordingly, "Alioto Law Firm" as the "Firm" opposed the LFG Motion
 7 because JMA is Alioto Law Firm. LFG does not claim nor assert that "the Alioto Law Firm" is
 8 different than, constitutes a stand-alone equity, or has a separate interest in this matter.

9 **III. LFG NEVADA CANNOT BE REVERSE PIERCED BY ITS MEMBERS.**

10 LFG Nevada is the moving party, as evidenced by the Declaration of Alan Zimmerman at
 11 7671-1, page 2, paragraph 5, lines 20-24. Exhibit C, which lists LFG as a Nevada LLC. This is the
 12 assignment executed by Law Finance Group in favor of LFG Nevada. LFG (Nevada or Delaware)
 13 as much concedes this fact in their Memo at page 9, lines 1-15. In response, the LFG entities claim
 14 that LFG Delaware is in good standing, and that "Alioto knows perfectly well that LFG is a
 15 Delaware, and not a Nevada LLC." (*Ibid.*, line 9.) Notwithstanding this claim, LFG Nevada is the
 16 moving party. LFG is bound by their sworn statements.

17 At the outset, these facts suggest that this is case of a purported "insider" attempting to
 18 pierce their own corporate veil, and disregard its existence. A corporate insiders, such as an
 19 officer, director or shareholder is estopped to deny its own corporate existence. *See Petersen v.*
 20 *Cloverdale Egg Farms*, 161 Cal.App.2d 792, 798 (1958); *Communist Party of the United States of*
 21 *America v. 522 Valencia, Inc.*, 35 Cal.App.4th 980, 994 (1995). This rule should likewise apply
 22 here and bar LFG Delaware from denying the existence of LFG Nevada and therefore bar LFG
 23 from claiming "standing" to prosecute this motion.

24 However, the reply are exceeding unclear as to the precise relationship between LFG
 25 Delaware and LFG Nevada. At best, Zimmerman states in his supplemental declaration,
 26 Document 7733-1, page 3, paragraph 8, lines 11-15, that LFG Delaware is in good standing.
 27 However, Zimmerman fails to state the relationship between LFG Delaware and LFG Florida.
 28 There is little doubt that the omission was intentional. The members and managers of LFG Florida

1 are H.Z. Legal LLC, LawFinance Group Holdings LLC, and Alpine Associates LP. See Exhibit A
 2 to Cook Decl., Documents 7703 and 7713, as part of the APPLICATION FOR REGISTRATION
 3 OF FOREIGN LIMITED LIABILITY COMPANY. Therefore, the documentary record fails to
 4 show any relationship between LFG Delaware and LFG Nevada and renders LFG Delaware a
 5 complete stranger.

6 Given this major concession that LFG is now cancelled, did not exist at the time of the
 7 2005 transaction, did not exist and therefore could not been an assignee, accordingly cannot bring
 8 this motion.

9 The prospect that LFG did not exist as of the date of the assignment (March 1. 2005 -
 10 Exhibit C-1 "ASSIGNMENT CERTIFICATE" Document 7671-6) has enormous implications. If
 11 in fact LFG Nevada did not exist as of March 1, 2005, LFG could not have been an assignee or
 12 buyer of the TLSA executed by JMA. LFG Nevada is therefore not an assignee and not entitled to
 13 the protections afforded an assignee of a Promissory Note sold by a licensed CFLL under Financial
 14 Code Section 22600(a). LFG Nevada therefore constitutes a "stand alone lender" without a CFLL
 15 license, and accordingly subject to the sanctions imposed under Financial Code Sections
 16 22750(a)&(b) and 22752. These sanctions include under Section 22750(b) a complete bar against
 17 enforcement. The court stated in *Brack v. Omni Loan Co., Ltd.*, 164 Cal. App. 4th 1312, 1326, 80
 18 Cal. Rptr. 3d 275, 284-85 (2008)

19 "The fundamental and unwaivable character of the Finance Lenders Law is also
 20 suggested in section 22750. Under section 22750 contracts made in willful
 21 violation of the Finance Lenders Law, including in particular violation of the
 22 requirement that a lender have a license issued by the commissioner, are void. If the
 violations are not willful, the lender must nonetheless forfeit any interest or
 charges. (§ 22752.) In addition, willful violations of the Finance Lenders Law are
 punishable with both civil and criminal penalties. (§§ 22713, 22753.)"

23 As LFG Nevada is a stand-alone lender and detached from the 2005 TLSA and, given that
 24 LFG did not exist at the time and could not, as a matter of law, been the assignee, LFG must be
 25 viewed not as an assignee under Section 22600(a), but subject to the sanctions of Section 22750 as
 26 an unlicensed lender. LFG concedes that a primary purpose of the loan was "personal, family and
 27 household." California courts have required strict construction of licensing statutes to insure strict
 28 compliance. See *Hydrotech Systems v. Oasis Waterpark*, 52 Cal.3d 988, 996 (1991) [contractor's

1 licensing statute applied to bar compensation sought by unlicensed contractor].

2 **IV. THE ADDITIONAL ADVANCES TO JMA WERE NOT SUBSEQUENT ADVANCES,**
 3 **BUT NEW ADVANCES.**

4 LFG (whatever this entity might be) claims that the subsequent loans were “subsequent
 5 advances.” This claim is contradicted by the language of the TLSA and the amendments which
 6 list the “advances” as “new advances.” Each one of these new loans were expressly described in
 7 the various amendments as “new advances.” See REFILED MEMORANDUM OF POINTS AND
 8 AUTHORITIES IN OPPOSITION . . . Document 7713, page 24, nos. 1-8, which characterize
 9 each advance as “new.” The “subsequent advances” are defined under the TLSA, page A-3,
 10 paragraph 1.2.32, and they are limited to the “maximum amount.” (Paragraph 1.2.25, page A-3.)
 11 The TLSA does not have a provision for “new advances.” LFG is bound by the terms of its own
 12 agreement under classic principles of the Parol Evidence Rule. *See CASA HERRERA, INC. v.*
 13 *NASSER BEYDOUN et al.*, 32 Cal.4th 336, 343, 9 Cal.Rptr.3d 97, 83 P.3d 497 (2004). Nowhere
 14 in the TLSA are “new advances” contemplated.

15 The argument that the advances were “subsequent” is contrary to the language of the
 16 TLSA.

17 **V. THE 2009 UCC IS INCONSISTENT WITH AND OUTSIDE THE SCOPE OF THE**
 18 **MOVING PAPERS.**

19 LFG seeks to cure all of its mistakes in the filing of the Financing Statements by citing to a
 20 2009 UCC. (Zimmerman Decl., Document 7732-2, Exhibit D.) The claim that the security interest
 21 was perfected by the 2009 UCC is in stark contrast to the Zimmerman Decl. which claims that the
 22 security interest was perfected by the filing of UCCs on January 12, 2004, July 15, 2004 and a
 23 Continuation Statement filed on December 31, 2008. (Zimmerman Decl., Document 7671-1, page
 24 2, paragraph 7, lines 26-28.) No effort has been made to explain this discrepancy, much less any
 25 other discrepancy.

26 **VI. THE ADDITION TO THE UCC3 OF THE BANK ACCOUNT WAS NOT**
 27 **AUTHORIZED.**

28 The additional collateral consisting of the bank account was outside the scope of the prior

1 Financing Statement. The description in Exhibit C to the Cook Decl. (Document 7713) includes
2 any amount payable to the debtor from the bank account. This description does not come within
3 the terms of Exhibit B, which itself does not list bank accounts or deposit accounts. This change
4 was unauthorized by JMA.

5 **VII. RECONSTRUCTING LFG'S MOTION AS A MOTION FOR SUMMARY**

6 **JUDGMENT.**

7 The resolution of LFG's Motion is found under FRCP 56, and whether as a matter of law
8 LFG (Nevada) is entitled to prevail on the basis there is no triable issue of material facts and that
9 LFG is entitled to recover as a matter of law. Under the microscope of FRCP 56, and given the
10 vast number of disputed issues, many of which bear concessions by LFG, including its existence.
11 the court should deny this motion.

12 As this case bears disputed issues of fact and law, this case should not be summarily
13 adjudicated, but rather, this dispute between the parties belongs in state court.

14 DATED: April 15, 2013

COOK COLLECTION ATTORNEYS

15 By: /s/ David J. Cook
DAVID J. COOK, ESQ. (SBN 060859)
16 Attorneys for Non-Party
JOSEPH M. ALIOTO

17 F:\USERS\DJCNEW\lfg.reply

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1 **PROOF OF SERVICE**

2 SCOTT S. BALBER
COOLEY LLP
3 1114 Avenue of the Americas
New York, NY 10036

4 JOSEPH B. WOODRING
5 COOLEY LLP
4401 Eastgate Mall
6 San Diego, CA 92121

7 I declare:

8 I am employed in the County of San Francisco, California. I am over the age of eighteen
(18) years and not a party to the within cause. My business address is 165 Fell Street, San
9 Francisco, CA 94102. On the date set forth below, I served the attached:

10 **APPLICATION FOR LEAVE TO FILE MEMORANDUM OF POINTS AND
11 AUTHORITES IN SUR REPLY TO REPLY IN FURTHER SUPPORT OF LFG
NATIONAL CAPITAL, LLC'S MOTION TO DIRECT FEES AND COSTS**

12 **DECLARATION OF DAVID J. COOK, ESQ. IN SUPPORT OF APPLICATION
13 FOR LEAVE TO FILE MEMORANDUM OF POINTS AND AUTHORITIES IN
SUR REPLY TO REPLY IN FURTHER SUPPORT OF LFG NATIONAL
CAPITAL, LLC'S MOTION TO DIRECT FEES AND COSTS**

14 on the above-named person(s) by:

15 XXX (BY MAIL) Placing a true copy thereof, enclosed in a sealed envelope with postage
16 thereon fully prepaid, in the United States mail at San Francisco, California, addressed to the
person(s) served above.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on April 15, 2013 at San Francisco, California.

20 _____
21 /s/ Karen Jen
22 Karen Jen
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION) Master File No. 07-1827 SI
This Document Relates to:) MDL NO. 1827
ALL INDIRECT PURCHASER ACTIONS)
**DECLARATION OF DAVID J. COOK, ESQ.
IN SUPPORT OF APPLICATION FOR
LEAVE TO FILE MEMORANDUM OF
POINTS AND AUTHORITIES IN SUR
REPLY TO REPLY IN FURTHER
SUPPORT OF LFG NATIONAL CAPITAL,
LLC'S MOTION TO DIRECT FEES AND
COSTS**

Date: April 26, 2013
Time: 9:00 a.m.
Judge: Hon. Susan Illston
Courtroom: 10, 19th Floor

I, DAVID J. COOK, hereby declare and state as follows:

1. I am one of the attorneys of record for Non-Party JOSEPH M. ALIOTO in the above-entitled action, am duly authorized to practice before all courts in the State of California, and am familiar with the facts and circumstances in this action.

2. Declarant requests leave of court to file an approximate 5-page sur reply that addresses issues in the Reply in Further Support of LFG National Capital, LLC's Motion to Direct Fees and Costs that are outside the scope of the opposition filed by JMA on April 5, 2013 as Document 7713. Declarant has endeavored to focus on only those issues in the sur reply which address "new

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¹ "or difference material" raised in LFG's own reply and avoid unduly burdening this court.

2 3. Declarant therefore seeks leave of court to file this sur reply, and commensurately
3 would not oppose a sur sur reply filed by LFG as a matter of equity.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on April 15, 2013 at San Francisco, California.

8 /s/ David J. Cook
DAVID J. COOK, ESQ. (SBN 060859)

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2
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1 **PROOF OF SERVICE**

2 SCOTT S. BALBER
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3 New York, NY 10036

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5 COOLEY LLP
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6 San Diego, CA 92121

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18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on April 15, 2013 at San Francisco, California.

20 _____
20 /s/ Karene Jen
21 _____
21 Karene Jen

22

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